train scheduled to leave Florence shortly before the arrival of the train from Manning was customarily held to accommodate passengers for Kingstree. He failed to make the connection, and was compelled to take a later train from Florence. *Held,* that defendant was liable in damages for the delay. *Cleckley* v. *Atlantic Coast Line R. Co.,* (S. C. 1916), 90 S. E. 32.

It is well settled that a railroad company is liable for delay proximately resulting from the misdirection of a passenger by a servant of the company having the requisite authority. *St. Louis S. W. Ry. Co.* v. *White,* 99 Tex. 359, 2 L. R. A. N. S. 110, and note. The liability, however, has usually been confined to cases of misdirection by a ticket agent at or shortly before the purchase of the ticket, or by a station agent, gatekeeper, or brakeman at the time of taking the train. *Mace* v. *Southern Ry. Co.,* 151 N. C. 404, 24 L. R. A. N. S. 1178 and note. Although it is not essential to the liability that the misdirection be contemporaneous (*Southern R. Co.* v. *Nowling,* 156 Ala. 222, 47 So. 180), it has been held that it will not bind the company if made a considerable time before the purchase of the ticket (*Atchison, T. & S. F. R. Co.* v. *Cameron,* 66 Fed. 709) and a casual statement by an agent, not a part of the consideration on which the ticket was purchased, has been held not to render the company liable for misdirection (*Dresser* v. *Canadian Pac. Ry. Co.,* 116 Fed. 281). A railroad company is not liable for a misdirection by an agent outside the scope of his authority (*Texas & P. Ry. Co.* v. *Smith,* 38 Tex. Civ. App. 4, 84 S. W. 852), and it has been held that the authority of a conductor does not extend to making the company liable for damages resulting from a reliance on promiscuous statements by him regarding the operation of the road (*Houston, E. & W. T. Ry. Co.* v. *Rogers,* 16 Tex. Civ. App. 19, 40 S. W. 201; *Gerardy* v. *Louisville & N. R. Co.,* 102 N. Y. Supp. 548, 52 Misc. 466). In the latter case it was held that the company was not liable for damages resulting from a reliance on the statement of the ticket agent, made at the time the ticket was purchased, and that of the conductor, made at the time the train was boarded, that it would make up for lost time. The facts in that case made a much stronger basis for liability than those in the principal case, since the misdirection was contemporaneous with the purchase of the ticket and the boarding of the train, and yet the liability was denied. The principal case goes far to make the railroad company liable for damage which, in the light of the previous decisions, might well have been considered *damnum absque injuria.*

CONSTITUTIONAL LAW—POLICE POWER—EQUAL PROTECTION OF LAW.—An ordinance of the City and County of San Francisco provided that "no person or persons owning or employed in the public laundries or public wash houses * * * shall wash, mangle, starch, iron, or do any other work on clothes between the hours of 6 o'clock P. M. and 7 o'clock A. M." *Held,* that the ordinance is unconstitutional. *Yee Gee* v. *City and County of San Francisco,* 235 Fed. 757.

In reaching the above conclusion, the court gave consideration to the two following problems: (a) Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unneces-

sary and arbitrary interference with the right of the individual to his personal liberty? (b) Is the regulation reasonable in its relation to the ostensible ends sought to be accomplished? A similar ordinance in *Barbier* v. *Connolly*, 113 U. S. 27, 5 Sup. Ct. 357, 28 L. Ed. 923, was upheld as constitutional; but in that case the hours during which labor was prohibited were from 10 P. M. to 6 A. M., leaving fourteen hours in which labor in public laundries might be performed; while in the principal case, the prohibited hours extend from 6 P. M. to 7 A. M., leaving but eleven hours for labor. It is well settled that the state in the exercise of its police power and for the protection of the health, morals, and safety of its citizens may prescribe the maximum number of hours for employment. *Soom Hing* v. *Crowley*, 113 U. S. 707, 5 Sup. Ct. 730, 28 L. Ed. 1145; *Holden* v. *Hardy*, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780. Every one would agree that the state would be justified in passing a law prohibiting an employee from laboring for eighteen or more hours per day, and on the other hand, no one would deny that it would be unreasonable to prohibit an employee from laboring for more than two hours per day. There are two rights involved in any such regulation of labor: on the one hand, the power of the state to legislate; on the other, the right of individual freedom of contract. The former gives the state the power to put a maximum on the number of hours which the employee may labor, the latter insures that this maximum number shall not be too low. The two powers thus opposing must meet at some point. The determination of whether or not the effect of a given regulation confines itself within the neutral space between these opposing rights is likely to be more or less affected by the personal opinions, upon economic and social problems, of the court which sits upon the question. Obviously, there can be no arbitrary gauge which can be applied to the law in question for the purpose of determining that this law on the one hand is a proper occasion for the application of the police power of the state, on the other hand, that it is not such an extension of this power as will amount to an unjust deprivation of the freedom of contract. In *Lochner* v. *New York*, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133, the court by a vote of five to four held a ten-hour law applicable to bakeries to be unconstitutional. Whether or not a given law regulating hours of labor is or is not a proper exercise of the police power of the state can not be determined by an examination of precedents alone, but a fair and just solution of the problem demands an exhaustive study of the particular law in question,—the trades to which it is applicable, the physical surroundings of those working in that trade with regard to air, noise, fumes, the benefit of protection that might be derived from reducing the hours, and other considerations that will suggest themselves to the reader. See Brief for Plaintiff in Error in *Bunting* v. *Oregon*, appeal now pending before United States Supreme Court; "FATIGUE AND EFFICIENCY," by JOSEPHINE GOLDMARK. As to the second problem mentioned above, the court came to the conclusion that inasmuch as one of the chief purposes in passing the ordinance was to reduce the danger from fires which reduction of danger would result by compelling laundries to close their places of business at 6 P. M., the wording of the ordinance was

broader than necessary for effecting this purpose. The ordinance was equally applicable to all parts of the city, yet it was proved that there were many wholly unoccupied blocks where the maintenance of a laundry could give rise to no conceivable danger of a general conflagration. The ordinance was therefore held to be discriminatory, as its provisions were not reasonably adapted to secure the ostensible end sought. It is interesting to note that the California state court construing the same regulation, but in a different case, held it to be constitutional. *Ex parte Wong Wing,* 138 Pac. 695. But in that case the court considered only the first of the two problems outlined above, and did not enter into any discussion of whether or not the ordinance was needlessly broad in its application. It will be observed that in *Barbier* v. *Connelly,* supra, the application of the ordinance was limited to certain districts, presumably those which would be most endangered by the maintenance of fires in these laundries during the prohibited hours.

CONTRACTS—CONTRACT TO PAY IN KIND.—Defendant bought brick from plaintiffs, contracting to pay in kind, no time for payment being specified. Defendant was willing that plaintiffs take sufficient brick from his kilns to pay for those he had purchased, but made no offer to return any of them. Plaintiffs never demanded payment in kind and several years later brought this action to recover the value of the brick. The auditor found that Jan. 1, 1909, the year following the sale, would have been a reasonable time within which defendant should have repaid in kind. *Held,* that defendant's right to pay in specific articles and not in money was a privilege to be exercised within a reasonable time and his failure to do so perfected plaintiff's right of action for the price of the brick, the contract not requiring a demand, and no special circumstances making a demand necessary before defendant could perform. *Nelson & Wallace* v. *Gibson* (Vt. 1916), 98 Atl. 1006.

The courts have generally agreed that a contract to pay in specific articles on a day specified, if not fulfilled by delivery at the time fixed, becomes a debt payable in money and that no demand is necessary. *Marshall* v. *Ferguson,* 23 Cal. 66; *Games* v. *Manning,* 2 Green (Ia.) 251; *Stewart* v. *Morrow,* 1 Grant (Pa.) 204. In *State* v. *Mooney,* 65 Mo. 494, it was held that a demand and refusal was necessary to convert the agreement into an obligation to pay money, when the time of payment was indefinite. The same conclusion has been reached in *Ragland* v. *Wood,* 71 Ala. 145; *McBain* v. *Austin,* 16 Wis. 87; *Isaacs* v. *N. Y. Plaster Works,* 40 N. Y. Supr. Ct. Rep. 277; *Newton* v. *Wales,* 3 Robt. 453. The court in the principal case regarded the right to pay in specific articles as a privilege to be exercised within a reasonable time, when not otherwise specified by the parties. A formal demand would not have affected defendant's situation, since he knew where to deliver the brick, and plaintiffs were not required to do anything before he could act. The reasoning in this case is supported by *Cass* v. *McDonald,* 39 Vt. 65, and *McKinnie* v. *Lane,* 230 Ill. 544. In most of the cases requiring demand where time is not specified, some act remained to be per-